

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

J & J CELCOM, *et al.*,

Plaintiffs,

v.

AT&T WIRELESS SERVICES, INC.,  
*et al.*,

Defendants.

No. CV 03-2629 P

**DECLARATION OF THOMAS  
HAYTON IN SUPPORT OF  
PLAINTIFFS' RESPONSE TO  
DEFENDANTS MOTION IN LIMINE  
REGARDING MORRIS'  
DECEMBER 17, 2004 REPORT**

**NOTED ON MOTION CALENDAR:  
FRIDAY, MAY 6, 2005**

THOMAS HAYTON declares as follows:

1. First, I cross reference statements about my credentials in my earlier declarations.
2. With regard to the above-referenced Opposition, I am enclosing true and correct copies of the following documents:
  - Plaintiffs' FRCP 26(a)(2) disclosures (relevant part to Morris), Attachment A
  - Morris Declaration of December 2, 2004, Attachment B
  - Morris letter opinion December 17, 2004, Attachment C
  - Plaintiffs 2<sup>nd</sup> Written Discovery Requests, October 18, 2004 (relevant to answer to interrogatory 13 regarding data on switch sharing costs). Attachment

**DECLARATION OF HAYTON REGARDING  
MORRIS' DECEMBER 17, 2004 REPORT**

No. CV 03-2629 P

1

Cutler Nylander & Hayton  
Professional Service Corporation  
505 Madison Street, Suite 220  
Seattle, Washington 98104  
Telephone 206 340-4600

1 D. There were no later revisions.

2 3. Interrogatory 13 (answered by attachment D) asked for all "cost(s) of providing  
3 switch sharing" to the Partnerships for the relevant time period. It also sought  
4 identification of the documents. The answer was an objection (vague etc) and  
5 a list of two documents, the *Linney* case settlement in 1997 (which provided  
6 simply the limitation on charges to be made for switch sharing at an amount not  
7 to exceed 1.5 cents/minute of use) and an internal memorandum. We had the  
8 *Linney* agreement already, but it is not an accounting document which traces  
9 costs. The memo came to us on December 1. We then got permission to  
10 submit a copy to Mr. Morris. His December 17 letter opinion referred to that  
11 document.

12 4. With regard to qualifiers included in the report (as to later-disclosed or  
13 uncovered documents), the comparable language of the October 20, 2004  
14 report of Defendants' expert witness Taylor, at p. 3, says: "the information and  
15 opinions in this report are based on discovery and materials made available to  
16 me . . . If my staff and I review additional material relevant to this report, I  
17 reserve the right to revise, supplement, or supersede [it] . . ." The similar  
18 language of defense witness Murphy, at October 20, 2004 p. 3, says "I reserve  
19 the right to supplement this report to address more specific claims or evidence  
20 that the Plaintiffs or their experts may present."

21 I swear that the foregoing is truthful to the best of my understanding and belief. This  
22 declaration is being signed under the laws of the State of Washington as to perjury.

23 Dated this 2<sup>nd</sup> day of May, 2005 at Seattle Washington.

24   
25 Thomas Hayton

26  
**DECLARATION OF HAYTON REGARDING  
MORRIS' DECEMBER 17, 2004 REPORT**

**HAYTON DECLARATION IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO MOTION IN LIMINE RE MORRIS OPINION  
STATEMENT**

**ATTACHMENT A**

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

J & J CELCOM, *et al.*,

Plaintiffs,

v.

AT&T WIRELESS SERVICES, INC.,  
*et al.*,

Defendants.

No. CV 03-2629 P

PLAINTIFFS' DISCLOSURES OF  
EXPERT WITNESS PURSUANT TO  
FRCivP 26(a)(2)

1. Charles E. Walters, ASA  
President  
C.E. Walters & Associates, Inc.  
4940 Hampden Ln  
Bethesda, MD 20814

1.1. *Reports containing all opinions to be expressed by the witness, the basis and reasoning, and the data considered.* Mr. Walters has created for each Partnership fair value appraisals<sup>1</sup> and valuations based on the pending acquisition of defendant AWS by Cingular Wireless, LLC, reflecting additional value of each Partnership's association in a national network of cellular telephone service providers.

<sup>1</sup> Using discounted cash flow valuation technique, public market valuation analysis, and private market valuation analysis.

Plaintiffs' Expert Witness Disclosures

No. CV 03-2629 P

1 All reports are attached. See enclosure A (note that the reports are marked  
2 "confidential" per the existing protective order. The reports describe data utilized  
3 by the author. Mr. Walters was provided by counsel three volumes of materials  
4 produced by defendants in discovery.<sup>2</sup>

5 1.2. *All exhibits to be used to summarize the opinion.* Exhibits now  
6 known to counsel are included in the reports.

7 1.3. *Qualifications of the witness (including publications authored for 10*  
8 *years).* Qualifications are described in each report and enclosure B.

9 1.4. *List of all cases in which he/she has testified as an expert for 4*  
10 *years.* These also are listed in enclosure B.

11 1.5. *Compensation to be paid to this firm.* Mr. Walters is being paid  
12 hourly according to his regular rate. Plaintiffs will provide the current total billed and  
13 paid soon.

14 2. George L. Johnson, CPA, CFA  
15 Kevin L. Grambush, CPA, ABV  
16 Evin Morris, CPA/ABV, CMA, CFM  
17 Jerry L. Epler, CPA, ABV  
18 Brueggemann & Johnson, PC  
19 601 Union St #2650  
20 Seattle WA 98101

21 2.1. *Report containing all opinions to be expressed by the witness, the*  
22 *basis and reasoning, and the data considered.* All four will collaborate on an  
23 analysis of charges assessed Partnerships by (or for) AWS for switch service to  
24 Partnership subscribers *vis a vis* AWS' costs for providing that service. Testimony will  
25 be by one of the four, likely either Mr. Johnson or Grambush. There also will be  
26 analysis and may be testimony on the degree and nature of AWS' compliance with the  
terms of the prior settlement agreement in *Linney v. Cellular Alaska Partnership*, D.C.  
N. Cal. # C-96-0300-DLJ et al as to accounting rules and the change in accounting

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<sup>2</sup> These materials were organized by Partnership and consisted of "valuation" data (Arthur  
Anderson LLP), financial statements (PriceWaterhouseCoopers LLP), and subscriber  
statistics.

Plaintiffs' Expert Witness Disclosures

No. CV 03-2629 P

1 rules<sup>3</sup> and practices after the settlement agreement expired and AWS eliminated the  
2 Partnerships. For reasons expressed in our pending motion for continuance, these  
3 studies are not ready.

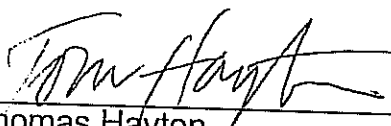
4 2.2. *All exhibits to be used to summarize the opinion.* Not yet available.

5 2.3. *Qualifications of the witness (including publications authored for 10*  
6 *years).* Curriculum Vitae for each potential witness are in enclosure C and a list of  
7 publications for the last 10 years will be provided shortly.

8 2.4. *List of all cases in which he/she has testified as an expert for 4*  
9 *years.* We are providing Brueggeman & Johnson PC's local referral list in enclosure  
10 D. A list of cases will be supplied shortly.

11 2.5. *Compensation to be paid to this firm.* Work is planned to be  
12 hourly (\$85 - \$300/hr) on a estimate per task basis. It is impossible to say more  
13 presently.

14 CUTLER NYLANDER & HAYTON P.S. by:

15   
16 Thomas Hayton

17 WSBA 5657

18 October 19, 2004

19 3

20 e.g., no allocation of AWS management fees, limits on financing transactions, not marking  
21 up the cost of goods beyond AWS' out of pocket costs, no rental charges for microwave  
22 equipment, and special rules for allocating specific costs (marketing expenses, general  
23 costs, and technical expenses).

24 Plaintiffs' Expert Witness Disclosures

25 No. CV 03-2629 P

# Enclosure C

# **George L. Johnson, CFA, CPA**

## **Curriculum Vitae**

### **Experience**

*Brueggeman and Johnson, P.C. and predecessor entities (1982-1984 and 1988-present)*

*Executive Vice President and Chief Financial Officer, Pacific First Federal Savings Bank (1984-1988):* Responsible for financial management, including asset/liability management, financial reporting, strategic planning and budgeting. Member of the Bank's Executive Committee. Served as member and Chairman of Senior Credit Committee and Asset/Liability Policy Committee.

*Vice President and Division Manager, Seattle First National Bank (1975-1982):* Responsibilities included development and management of corporate diversification consisting of emerging companies, manager of strategic planning for the Corporation, manager of asset/liability planning, manager of Corporate-wide budgeting, financial management of 170 branches, placement of corporate debentures, and financial analysis of a broad spectrum of Corporate decisions, including acquisitions, real estate, capital expenditures, and issuance of securities.

*Investment Analyst, Safeco Insurance Company (1972-1975):* Responsible for researching and analyzing selected industries and companies, and recommending and managing investments in those securities. Manages a \$60 million stock portfolio and represented the Corporation on Venture Capital Board.

### **Memberships**

Chartered Financial Analyst Designation  
Certified Public Accountant—Washington

Member of:   Financial Analysts Federation  
                  American Institute of CPAs  
                  Washington Society of CPAs  
                  Seattle Society of Financial Analysts

### **Education**

Bachelor of Science, Electrical Engineering, University of Washington

Master of Business Administration, Wharton School of Finance, University of Pennsylvania  
Concentration: Finance and Accounting

Graduate of Pacific Coast Banking School



# *Kevin L. Grambush, CPA, ABV*

## **Curriculum Vitae**

### Experience

*Vice-President, Brueggeman & Johnson Capital, PC:* Director of Business Valuation, providing business valuation, consulting, and litigation services, as well as expert testimony at deposition and trial: June 2003 to present

*President, Grambush Valuation Advisors, PC:* Providing business valuation, consulting, and litigation services, as well as expert testimony at deposition and trial: 1999 to June 2003

*Instructor for the National Education Program In Business Valuation, American Institute of Certified Public Accountants (AICPA):* 1998 to present

*Shareholder, Martin/Grambush, PC:*

- Director of Business Valuation/Litigation Support Services, 1993 – 1999
- Director of Audit Services, 1982 - 1995
- Healthcare Consulting Group, 1985 – 1993 (Director from 1990 – 1993)

*Licensed as Certified Public Accountant in the State of Washington*

*Accredited in Business Valuation through the AICPA*

*Qualified as an expert witness*

### Memberships

- American Institute of Certified Public Accountants
- Washington Society of Certified Public Accountants
- WSCPA Business Valuation Committee
- Chair of WSCPA Litigation Services Committee
- Management Consulting Services Division, American Institute of Certified Public Accountants
- Financial Consulting Group

### Education

- University of Washington, BA in Business Administration, 1979
- Professional Mediation Training (Alhadeff), 1998
- Recent education related to Business Valuation/Litigation Services:
  - Business Valuation and Litigation Services, 1996, sponsored by CPA Associates International
  - National Association of Certified Valuation Analysts National Conference, 1997
  - Business Valuation Educational Program, 1997, sponsored by CPA Associates International
  - Business Valuation Learning Institute, 1997, sponsored by the National Association of Certified Valuation Analysts
  - Business Valuation Educational Program, 1998, sponsored by CPA Associates International
  - ASA/CICBV Joint Business Valuation Conference, 1998
  - Business Valuation Educational Program, 2000, sponsored by CPA Associates International
  - FCG University – Litigation Conference, April 2001
  - FCG University – Market Approach Analysis, April 2002
  - Business Valuation Conference, November 2002, sponsored by the American Institute of Certified Public Accountants

# *Evin T. Morris, CPA/ABV, CMA, CFM*

## **Curriculum Vitae**

### Experience

*Financial and Valuation Analyst, Brueggeman & Johnson Capital, PC: (Oct. 2003- present); Axia Consulting P.C. (Own Firm, April. 2003-September, 2003); Dixon Odom, P.L.L.C. (1998-1999); Brueggeman and Johnson, P.C. (1995-1998.)* Provided business valuation, consulting, and litigation services, as well as expert testimony at deposition and trial. Provided clients with analytical support in various contexts, including franchise negotiations, insurance and lost-profits litigation, bankruptcy, marriage dissolutions, and IRS and SEC filings.

*Misc. Consulting Work (1999-2003)* Consulted with various clients in connection with financial and accounting issues. Assisted with the raising of a \$400 million Venture Capital Fund. Served in an interim CFO/Controller/Analyst role for several organizations, including the aforementioned Venture Capital Firm, an early-stage technology company, and an Internet-media firm. Managed or assisted with workpaper-preparation for SEC compliant audits. Also completed many smaller financial analysis/accounting projects related to tax, audit and operational issues for clients in investment, manufacturing, real estate and construction industries.

*Directors Mortgage Loan Corporation (1993-1994)* Mortgage loan officer; also reviewed Company's national marketing materials in advance of publication, addressing compliance and disclosure issues.

*University of Washington Graduate School of Business (1991)* Graduate teaching assistant in University's Accounting Department.

*Hogan Mecham Richardson, and Co., CPA's (1987-1990)* Progressed from staff to senior-level accountant, having full-charge responsibility for audits and tax-return preparation. Industry exposure included clients in the forest products, seafood processing, retail, manufacturing, and construction industries, as well as municipal governments, school districts, a credit union, and several non-profit social-service organizations.

*Licensed as Certified Public Accountant in the State of Washington*

*Accredited in Business Valuation through the AICPA*

*Certified Management Accountant-* (Awarded Robert Beyer Bronze Medal sponsored by Deloitte and Touche for achieving #3 score worldwide on CMA exam)

*Certified in Financial Management by the Institute of Certified Management Accountants-* (Awarded Johnson and Johnson Bronze Medal for achieving #3 score worldwide on CFM exam)

*Qualified as an expert witness*

### Memberships

- American Institute of Certified Public Accountants
- Washington Society of Certified Public Accountants
- Institute of Management Accountants

### Education

- University of Washington, Master of Business Administration, with certificate in environmental management- 1993
- Reed College- Bachelor of Arts (Philosophy) - 1986

# *Jerry L. Epler, CPA, ABV*

## Curriculum Vitae

### Experience

*Brueggeman and Johnson Capital, PC:* Providing valuation consulting services to closely-held companies

*Grambush Valuation Advisors, PC:* Providing valuation appraisal and consulting services to closely-held companies

*Baldwin Resource Group:* Business Consulting Services, Senior Consultant

*Unigard Insurance Company,* VP Controller

*Deloitte & Touche,* Audit Staff

*Licensed as Certified Public Accountant in the State of Washington*

*Accredited in Business Valuation through the AICPA*

### Memberships

- American Institute of Certified Public Accountants
- Washington Society of Certified Public Accountants
- Business Valuation Subcommittee, Litigation Services Committee, Washington Society of Certified Public Accountants
- Northwest Entrepreneur Network
- Financial Consulting Group
- The Planning Forum, Past President
- Insurance Accounting and Statistical Association, Past Director
- National Association of Accountants, Past Associate Director

### Education

- University of Washington, BA in Business Administration, 1970
- Recent education related to Business Valuation/Litigation Services:
  - Business Valuation Learning Institute, 1998 sponsored by the National Association of Certified Valuation Analysts
  - National Association of Certified Valuation Analysts National Conference, 1999
  - Litigation Support Conference, 1999 and 2001, Washington Society of CPA's
  - Business Valuation Conference, 2000, Financial Consulting Group
  - Current Update in Valuations, 2001, National Association of Certified Valuation Analysts
  - Business Valuation Part II, 2001, American Institute of Certified Public Accountants
  - Business Valuation Part I, 2002, American Institute of Certified Public Accountants

# Enclosure D

# Professional References

*Brueggeman and Johnson Capital, P.C.*

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# Professional References

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*Terence V. O'Keefe*  
Deloitte & Touche LLP  
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Seattle, WA 98104-5044  
(206) 292-1800

# Professional References

*Brueggeman and Johnson Capital, P.C.*

## Arbitration and Mediation

*Honorable Charles S. Burdell*  
Judicial Dispute Resolution  
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*Earl P. Lasher*  
Lasher, Holzapfel, Sperry &  
Ebberson PLLC  
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Seattle, WA 98101  
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*Honorable Gerard M. Shellan*  
J.A.M.S.  
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Seattle, WA 98101  
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Cutler Nylander & Hayton

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Robert G. Nylander  
Telephone 206 340-4606  
rgnylander@cnhlaw.com

October 22, 2004

File: 6108.01

***Via Fax & U.S. Mail***

Brendan T. Mangan  
Heller Ehrman White & McAuliffe LLP  
701 Fifth Ave #6100  
Seattle WA 98104-7098

Re: *J&J Celcom, et al. v. AT&T Wireless Services, Inc., et al.*  
*CV03-2629*

Dear Brendan:

Tom Hayton is out of the office and has asked me to forward to you the lists of recent testimony and publications by Messers. Johnson, Grambush and Morris. Please find them enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bob', with a long horizontal flourish extending to the right.

Robert G. Nylander

Enclosure (as stated)

Testimony Summary in Deposition or Court for Years 1999 - Present

Deposition Testimony Only

Date	Case Name	File #	Type of Business	Type of Case	Party Represented	Jurisdiction	Cause #
3/99	Superior Hardwoods	97103	Hardwoods	Damages/lost profits	Plaintiff	Missoula County	83128
8/99	Superior Hardwoods	97103	Hardwoods	Damages/lost profits	Plaintiff	Missoula County	83128
10/99	Moshovakis	99542	Maternity clothing	Damages/lost profits	Plaintiff	King County	
11/26/99	Halvorsen	99501	Helicopter tours	Damages/lost profits	Defendant	Western District	C98-676L
12/18/99	Microsoft (Knox v.)	98557	Software	Valuation/stock option	Plaintiff	King County	95-2-11369-9SEA
12/16/1999	Regional Disposal Co.	99527	Garbage hauling	Lost profits	Plaintiff	King County	94-2-19696-1 SEA
1/10/00	Regional Disposal Co.	99527	Garbage hauling	Lost profits	Plaintiff	King County	94-2-19696-1 SEA
3/10/00	Metro Homes	20516	Real estate development	Damages/lost profits	Defendant	Steubomish County	98-2-19696-1 SEA
4/11/2000	Columbia Machine	20518	Construction equipment	Lost wages	Defendant	Clark County Superior Court	98-2-04491-6
8/27/2001	Torbet And Castleman	01522	Food processing	Purchase price adjust.	Plaintiff	American Arbitration Assoc.	98-2-01492-3
9/9/2004	Kelly, David C.	00155	Residential remodeling	Lost Wages	Plaintiff	Pierce County	03-2-12311-6

Deposition and Trial Testimony

Date	Case Name	File #	Type of Business	Type of Case	Party Represented	Jurisdiction	Cause #
7/9/99	Coopers & Lybrand	98545	Accounting firm	Lost profits/damages	Defendant	Spokane County	
9/26/99	Coopers & Lybrand	98545	Accounting firm	Lost profits/damages	Defendant	Spokane County	
5/15/2000	Columbia Machine	20518	Construction equipment	Lost wages	Defendant	Clark County Superior	98-2-01492-3
10/13/2000	Grocers Insurance	99576	Insurance	Damages/lost profits	Plaintiff	Cowlitz County	97-2-010595-5
10/24/2000	Microsoft (Davis v.)	20511	Software	Lost wages	Defendant	King County	99-2-05448-2 -SEA
1/29/2001	Qwest	20553	Telecommunications	Lost profits	Defendant	Western District	C00-0013C
1/31/2001	Microsoft (Browne v.)	20577	Software	Wrongful termination	Defendant	Western District	C99-1665C
5/22/2001	HI-Q Printing	99514	Printing	Lost profits	Plaintiff	King County	97-2-17866-5 SEA
6/28/2001	Dryer	20141	Telecommunications	Lost profits	Plaintiff	3rd District Alaska Superior	3AN-98-10930Cjvl
8/14/2001	Lanierman	20541	Venture capital	Lost profits	Plaintiff	King County	00-2-14333-8 SEA
3/5/2002	Interactive Objects	02504	Software	Stock valuation	Defendant	King County	00-2-16733-4 SEA
3/13/2002	Interactive Objects	02504	Software	Valve of securities	Defendant	King County	00-2-16733-4 SEA
4/25/2002	U.S. Engine	02530	Engine remanufacturer	Lost profits	Plaintiff	King County	00-2-28460-8 KNT
4/26/2002	U.S. Engine	02530	Engine remanufacturer	Lost profits	Plaintiff	King County	00-2-30307-6 KNT
12/8/2003	U.S. Engine	02530	Engine remanufacturer	Lost profits	Plaintiff	King County	00-2-30307-6 KNT

Arbitration/Mediation Testimony

Date	Case Name	File #	Type of Business	Type of Case	Party Represented	Jurisdiction	Cause #
5/1/2000	Jensen	99531	Restaurant	Lost profits	Plaintiff	King County	99-2-09452-2 SEA

Publications:

- 1 "Valuation of "S" Corporations revisited: The impact of the life of an "S" election under varying growth and discount rates"  
*Business Valuation Review, December 31, 1993*
- 2 "Valuation of Options On Restricted Stock Using Simple Modifications of the Black-Scholes Model"  
*Business Valuation Review, June, 1998*
- 3 "An Expert Witness Can Make or Break a Case"  
*Journal of Accountancy, August 2001*

Kevin Grambush

Court Cases within the Preceding Four Years

I have testified as an expert at trial or deposition in the following cases within the preceding four years:

- Johansen v. Johansen, 2000
- Aysel Sanderson v. Christine Nygaard, 2000
- Lorenz et al v. Lindal Cedar Homes, 2001
- MHKB, Inc. v. Sound Transit, 2001
- Ian Rodihan v. Christine Murphy, 2001
- Speedy 24, Inc. v. Powell-Christensen, Inc., 2001
- Birdwell/Backman v. Wizards of the Coast, 2001
- Taiko America, Inc. v. Triex NW, Inc. et al, 2002
- Michael Dorsey v. Julie Dorsey, 2002
- J. Michael Glover v. Wade Cook Seminars, 2002 (San Juan County District Court, New Mexico)
- 3601 Group Inc. v. Wild Oats Markets, Inc., 2002
- Greg Carpenter v. Jacquelyn Carpenter, 2002
- Mark Montgomery and Pristine Capital Management N.W. v. John Jessum, 2002
- 24-Hour Fitness v. Joy Shamburger, 2002
- Hacker & Willig, Inc. PS v. Holland & Knight LLC, VanValkenberg Furber Law Group PLLC, 2003
- Fisher v. Beaudry Law Firm, 2004
- Bishop v. Bishop (arbitration) 2004
- Ray J. Akers and Douglas L. Cargill v. Kai M. Schrade and Andrew L. Celli, 2004
- U.S. Health & Fitness, Inc. et al v. American Service Finance Corporation (2004)
- Getchell v. Getchell (arbitration), 2004

Unless otherwise noted, the venue for each of these cases was King County, Washington, Superior Court.

# Evin T Morris

## Testimony Summary

### Arbitration/Mediation Testimony

Date	Case Name	Type of Business	Type of Case	Attorney	Testifying For	Opposing Expert	Jurisdiction
Sep/1995	Southgate Ford	Auto Dealer	Dealer Franchise Termination	Don Kellman	Dealer	Ford Marketing	Ford Dealer Policy Board
Jun/1998	New Wilson Ford	Auto Dealer	Dealer Franchise Termination	Don Kellman	Dealer	Ford Marketing	Ford Dealer Policy Board

### Court Testimony

Date	Case Name	Type of Business	Type of Case	Attorney	Testifying For	Opposing Expert	Jurisdiction
Jun/1996	Borrego	Construction Contractor	Bankruptcy	Krista White	2 Creditors	N/A	US Bankruptcy Court
Sep/1998	Marten	Manufacturer's Representative	Divorce	Rosemarie LeMoine	Wife	Kessler, Steve	King County

### Deposition Testimony

Date	Case Name	Type of Business	Type of Case	Attorney	Testifying For	Opposing Expert	Jurisdiction
Jul/1998	Marten	Manufacturer's Representative	Divorce	Rosemarie LeMoine	Wife	Kessler, Steve	King County
Jun/2003	Mika v Miglino, et al.	N/A	Predatory Lending	Art Brown	Plaintiff	N/A	King County
May/2004	Trial v. First Horizon Mfg.	N/A	Predatory Lending	Art Brown	Plaintiff	N/A	King County
Oct/2004	Tunnelson Family Limited Partnership et al. v World Financial News Network et al.	Web-based financial information service	Investor Fraud	Stephen VanDerhoef	Plaintiff	N/A	Federal Court- Western Washington

# Cutler Nylander & Hayton

Professional Service Corporation

Telephone 206 340-4600

505 Madison Street, Suite 220

Seattle, Washington 98104

Facsimile 206 340-4646

## FAX TRANSMITTAL MEMORANDUM

DATE : October 22, 2004

TIME : 3:30 Pacific Time

TO: Brendan Mangan

Fax No.: (206) 447-0849

SENDER: Elizabeth Fuhrmann  
For Thomas Hayton

BILLING/FILE: 6108.01

REFERENCE: J&J Celcom, et al. v. AT&T Wireless Services, Inc., et al.

---

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### MESSAGE

Mr. Mangan:

Enclosed please find a copy of Mr. Nylander's letter dated October 22, 2004..

---

THIS TRANSMISSION CONSISTS OF 5 PAGES, INCLUDING THIS COVER SHEET

TRANSMISSION VERIFICATION REPORT

TIME : 10/22/2004 03:35  
NAME : CUTLER NYLANDER HAYT  
FAX : 2063404646  
TEL : 2063404600  
SER. # : BROK3J764275

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**HAYTON DECLARATION IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO MOTION IN LIMINE RE MORRIS OPINION  
STATEMENT**

**ATTACHMENT B**

The Honorable Marsha J. Pechman

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

J & J CELCOM, *et al.*,

No. CV 03-2629 P

Plaintiffs,

v.

DECLARATION OF EVIN MORRIS

AT&T WIRELESS SERVICES, INC.,  
*et al.*,

Defendants.

EVIN MORRIS declares as follows:

1. I and my firm have been retained by plaintiffs in this case to advise, and potentially testify, on matters of financial accounting and valuation. I am licensed in this state as a Certified Public Accountant, and am accredited in Business Valuation by the American Institute of Certified Public Accountants. I also hold the Institute of Management Accountants' designations of

DECLARATION OF EVIN MORRIS  
No. CV 03-2629 P

1

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Professional Service Corporation  
505 Madison Street, Suite 220  
Seattle, Washington 98104  
Telephone 206 340-4600



1  
2 "Certified Management Accountant", and "Certified Financial Manager." Although my current  
3 practice focuses on closely-held company valuation and litigation-related financial analysis, I  
4 have in the past worked, on a contract/consultant basis, as an accountant with Western  
5 Wireless, Inc. My primary responsibilities there involved preparing detailed reconciliations and  
6 recommended accounting adjustments for the accounts involving the Company and its  
7 operating partnerships in preparation for its first financial statement audit in 1995.  
8  
9

10 2. Our general role, to the extent of available documents, is to evaluate and quantify accounting  
11 practices employed by which AT&T Wireless and its subsidiaries for the companies in which it  
12 or a subsidiary was a majority partner and plaintiffs were minority partners ("Partnerships"),  
13 with a particular sensitivity to procedures which had an inequitable impact on the Partnerships  
14 but were not addressed by the prior settlement in *Linney v. Cellular Alaska Partnership* (N.D.  
15 Cal. No. C-96-03008 DLJ).  
16  
17  
18

19 3. Tasks we have been asked to do include familiarizing ourselves with the report of defense  
20 financial analyst Michael Murphy and, to ascertain special constraints on the accounting system  
21 for the Partnerships" because of *Linney*. To the extent possible with documents provided and  
22 time available, we also are to compare accounting systems actually used for the Partnerships  
23 prior to and after the expulsion of the plaintiffs. In this latter regard, we are aware of plaintiffs'  
24 complaints about internal accounting for switch sharing fees (in which the claim is that fees  
25 charged included an amount above costs incurred by AWS or its subsidiaries) and about so-  
26

DECLARATION OF EVIN MORRIS  
No. CV 03-2629 P

2

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Seattle, Washington 98104  
Telephone 206 340-4800

1  
2 called "incollect" and "outcollect" charges (in which plaintiffs claim that AWS' rate structure  
3 was unfair to the Partnerships). We are to ascertain the accounting practices actually  
4 employed by studying the chart(s) of accounts which were current during the years involved  
5 and the financial data for those same periods.  
6

7  
8 4. I have seen 18 boxes of materials produced by AWS to plaintiffs in this case. I found them  
9 to be disorganized and very difficult to use: documents on the same topic (e.g., accounting data  
10 for a particular Partnership) are found throughout the boxes and key basic records (such as the  
11 only example I was able to find of what appeared to be a chart of accounts) was near the end of  
12 the production. (The first page of the latter bears a number of 34,745, which I understand was  
13 part of the last production of documents which came with a cover letter dated November 5,  
14 2004.)  
15

16  
17  
18 5. In their present condition, it will take several months for us to sort, understand, and report on  
19 those boxes of records. In many cases, the documents appear to be printouts of spreadsheets  
20 that come from single Excel "workbook" files and contain linked data (i.e. data which is an  
21 "input" to one sheet appears to be a computed "output" from another.) Our ability to understand  
22 how the disclosed documents relate to each other, and how "complete" a story they tell would  
23 be considerably enhanced if we were to be given electronic versions of spreadsheets disclosed  
24 by AWS. The amount of time required to understand these disclosures would probably also be  
25 significantly reduced.  
26

DECLARATION OF EVIN MORRIS  
No. CV 03-2629 P

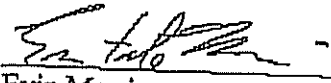
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1  
2  
3  
4 6. I am aware of Mr. Oitzinger's effort to translate the documents into an electronic database so as  
5 to be able to organize them electronically. When that is done, it may be possible to determine  
6 that an detailed analysis of AWS accounting procedures and their impact on one or more of the  
7 Partnerships provides a reasonable basis for assessing their impact on all the Partnerships. This  
8 may allow us to reduce the time and expense associated with our work. Again, our work in this  
9 area would be speeded by the availability of the electronic versions of the spread sheets.

10  
11  
12 7. Also, given the constraints of the case and the nature of the production, our conclusions in this  
13 matter will probably have to remain preliminary and subject to modification on the basis of  
14 additional information received. In particular, given the lack of specific identification of the  
15 documents (e.g., a plain statement by defendants that document 34,745 really is the chart of  
16 accounts which was in effect for the entire period at issue) and the lack of an ability to consult  
17 with the AWS employees (which Mr. Murphy had), our conclusions would likely have to  
18 remain tentative pending further disclosures by Defendants.  
19

20  
21  
22 Signed this 2nd day of December, 2004 at Seattle, Washington.

23  
24   
25 Evin Morris  
26

DECLARATION OF EVIN MORRIS  
No. CV 03-2629 P

4 Cutler Nylander & Hayton  
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**HAYTON DECLARATION IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO MOTION IN LIMINE RE MORRIS OPINION  
STATEMENT**

**ATTACHMENT C**

BRUEGGEMAN  
AND JOHNSON, P.C.

December 17, 2004

RECEIVED

DEC 17 2004

Phillip Cutler  
Cutler Nylander and Hayton  
505 Madison Street, Suite 220  
Seattle, Washington 98104

Cutler Nylander & Hayton

RE: J&J Calcom et al. v. AT&T Wireless Services, Inc ("AWS"); et al.  
Review of certain documents designated "Highly Confidential".

Dear Mr. Cutler,

Prior to preparing our previous declaration (December 8) on this matter, we examined 18 boxes of documents produced to Plaintiffs by AWS in relation to this case. As described in my previous declaration, we found them highly disorganized, and difficult to understand and use.

We have since conducted a brief review of certain documents designated "highly confidential" provided by your office (Bates #'s AWSJJ 032812 to AWSJJ 032835).

Most of the documents appear to have been prepared for a July 15, 2002 meeting about appropriate 2002 rates at which to allocate certain network capital costs to certain cellular markets. The attached computations appear to indicate that, at least in the preliminary opinion of someone at AWS, a reasonable 2002 rate for allocating TDMA-system costs relating to switch-use, "national initiatives," and "access" was approximately 79/100 cent per minute of use, rather less than the 1.5 cents AWS had in fact been charging.

Although these documents indicate that the actual switch related costs were substantially less than what was charged, these computations appear to have been prospective and were apparently intended to indicate a reasonable rate to be applied in year 2002. As such they are not responsive to the issue of the reasonableness of the switch related cost allocations in years prior to 2002, and we will need additional information to perform our analysis.

To properly complete an analysis related to the appropriate switch related costs from 1997 to the buy out date, we will need all information required to calculate or allocate switch related costs during that time period, including:

1. An analysis similar to Bates AWSJJ032817 for years previous to 2001, if available.
2. Calculations or allocations of switch related costs prepared by AWS for this time period, if any.

Mr. Phillip Cutler  
December 17, 2004  
Page 2 of 2

**BRUEGGEMAN  
AND JOHNSON, P.C.**

3. Details or summaries of all costs during this period which may be allocated as a part of the switch related cost.
4. Any variance analysis prepared by AWS to compare actual switch related costs with costs charged to the systems.
5. Any information provided to Mr. Michael Murphy or his firm concerning switch related costs or other cost sharing or cost allocation issues between AWS and the Partnerships.
6. Any other information which is necessary to determine the reasonable switch related costs and/or allocations of switch related cost.

Sincerely,

**BRUEGGEMAN AND JOHNSON, P.C.**



Evin T Morris CPA/ABV, CMA, CFM

**HAYTON DECLARATION IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO MOTION IN LIMINE RE MORRIS OPINION  
STATEMENT**

**ATTACHMENT D**

RECEIVED

OCT 18 2004

Cutler Nylander & Hayton

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

J & J CELCOM, *et al.*,

Plaintiffs,

v.

AT&T WIRELESS SERVICES, INC. *et al.*,

Defendants.

Case No. CV 03-2629 P

PLAINTIFF'S SECOND  
DISCOVERY REQUEST AND  
OBJECTIONS AND RESPONSES  
THERE TO

Defendants AT&T Wireless Services, Inc., McCaw Cellular Interests, Inc., AT&T Wireless Services of Colorado, LLC, AT&T Wireless Services of Idaho, Inc., AT&T Wireless Services of Washington, LLC, AT&T Wireless Services of California, LLC, AT&T Wireless Services of Minnesota, Inc., McCaw Communications of Texarkana, Inc., and McCaw Communications of Wheeling, Inc. ("Defendants") respond to Plaintiffs' Second Discovery Requests as follows:

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

1. Defendants make the following general objections to these discovery demands, which objections are incorporated herein to the extent applicable. The



1 **Interrogatory No. 13:**

2 With regard to your denial of Complaint para. 67 that you continued to charge  
3 the Partnerships switch-sharing fees of 1.5 cents/minute even though your cost had  
4 shrunk to less than 0.25 cents/minute, please:

- 5 a. State what your cost(s) of providing switch sharing was during various  
6 times from May 1997 to January 1, 2004; and  
7 b. Identify material documents supporting your answer to (a).

8 **Response To Interrogatory No. 13:**

9 In addition to their General Objections, each of which is incorporated herein as  
10 if fully set forth, Defendants object to this request as vague, ambiguous, overbroad and  
11 unduly burdensome. Subject to and without waiving these objections, Defendants  
12 respond as follows:

13 See the Settlement Agreement. AWSJJ 032608 -AWSJJ 0032671. See also  
14 AWSJJ 032812-032835. ✓

15 **Interrogatory No. 14:**

16 With respect to your evident assertion (in answer to our Complaint para. 69) that  
17 more plaintiffs than S&D Partnership accepted your tender offers, please:

- 18 a. Identify all such plaintiffs; and  
19 b. Identify any materially supporting document.

20 **Response To Interrogatory No. 14:**

21 In addition to their General Objections, each of which is incorporated herein as  
22 if fully set forth, Defendants object to this request as vague and ambiguous. Subject to  
23 and without waiving these objections, Defendants respond as follows:

24 Cell-Cal IX-T9 and Brady Ranch voluntarily sold their interests in Redding  
25 Cellular Partnership. Ronald Wilson voluntarily sold his interest in Rochester  
26 CellTelCo. Additionally, Donnelly Communications and Hisao Shigeishi voluntarily  
27 sold their interests in Yuba City Cellular Telephone Company and Yakima Cellular  
28 Telephone Company, respectively. (Defendants note, however, that Donnelly

1 Dated this <sup>th</sup>18 day of October, 2004

2  
3 HELLER EHRMAN WHITE & MCAULIFFE  
4 LLP

5  
6 By Kristen Wynne  
7 Brendan T. Mangan, WSBA NO. 17231  
8 Kristen B. Wynne, WSBA NO. 28513  
9 Attorneys for Defendants

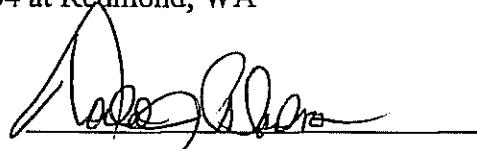
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VERIFICATION

I, Todd J. Pladson, hereby declare:

I am a Manager for AT&T Wireless Services, Inc. I am authorized to make this verification on behalf of AT&T Wireless Services, Inc. I have read the foregoing Plaintiff's Second Discovery Requests and Objections and Responses Thereto and know the contents thereof. I am informed and believe that the matters stated herein are true and on that ground declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of October, 2004 at Redmond, WA



Todd J. Pladson

SE 2052816 v2  
10/15/04 11:13 AM (18228.0010)